THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.17535 OF 2006

Dated: 04th September, 2006.

Between :

B. Hema Malini .. Petitioner

And

1. The APSRTC, rep. by its Vice-Chairman-cum-Managing Director, Musheerabad, Hyderabad; and another. .. Respondents

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ORDER

The writ petitioner is the owner of bus bearing No.AP-03-U-4050. She entered into a hire purchase agreement with the A.P. State Road Transport Corporation. It is not in dispute that the contract has come to an end on 14-5-2005 and the petitioner had withdrawn the vehicle. Thereafter, the petitioner requested the Corporation to issue a clearance certificate so as to enable her to sell the vehicle to third parties. In pursuance thereof, the 2nd respondent by letter dated 28-7-2006 informed the petitioner that since her vehicle was involved in an accident and the claim for payment of compensation is pending before the Motor Accidents Claims Tribunal vide O.P.No.112 of 2003 for a sum of Rs.40,000/-, and therefore the petitioner has to submit Bank Guarantee for Rs.40,000/- for a period of 10 years so as to issue clearance certificate as sought by her. Aggrieved by the said action of the respondent, this writ petition is filed.

The petitioner does not dispute the fact that on 10-12-2002 while the petitioner's bus was plying under hire agreement with the Corporation, it met with an accident resulting in injuries to one Y.Eswaraiah, who filed O.P.No.112 of 2003 on the file of the Motor Accidents Claims Tribunal-cum-II Addl. District Judge, Madanapalli. The petitioner being the owner of the vehicle was also made a party-respondent to the said O.P. apart from the United India Insurance Company, with whom the vehicle was insured, and the A.P. State Road Transport Corporation as respondents 2 and 3. After hearing both parties, award was passed on 5-4-2005 in O.P.No.112 of 2003 granting a sum of Rs.40,000/- as compensation and holding that APSRTC alone is liable to pay the said compensation along with interest.

The petitioner contends that since the vehicle in question is duly insured, the Insurance Company shall be made liable to pay compensation and therefore the action of the respondent Corporation in calling upon the petitioner to furnish Bank Guarantee is arbitrary and

illegal.

On the other hand, the learned Counsel appearing for the Corporation contended that as per clauses (v) & (iv) of hire agreement, the owner of the vehicle shall be responsible for all claims that may arise out of the accident claims under the provisions of the Motor Vehicles Act, 1988 and the Corporation under no circumstances can be made liable.

I have heard the learned Counsel for both the parties and perused the material on record.

Since the facts leading to the impugned order are not in dispute and since the law relating to this issue is also well settled, with the consent of the learned Counsel for both the parties, the writ petition is disposed of at the stage of admission.

The Supreme Court in RAJASTHAN STATE ROAD TRANSPORT CORPORATION v. KAILASH NATH KOTHARI[1] having considered the scope and object of definition of the owner under Section 2 (19) of the Motor Vehicles (old) Act, 1939 held that the liability of the owner is vicarious for the fault committed by its employee during the course of his employment and it would be a question of fact in each case as to on whom vicarious liability can be fastened in the case of accident. Following the said decision, this Court in K. MATURA BAI v. A. SHIVA NAGESWAR RAO[2] while considering an issue relating to the liability of the owner of the bus hired with APSRTC, held that the definition of owner shall be extended to the person who is in actual possession of the vehicle and consequently the Corporation shall be considered as the owner of the vehicle having been in physical control and possession of the vehicle and run the same on the route earmarked to it. So far as the liability of the insurer, it was held that the Corporation is vicariously liable for the rash and negligent driving of the driver of the offending vehicle and the insurer is liable to indemnify the owner as per the terms of the policy

under which the vehicle has been covered.

The ratio laid down in the said case squarely applies to the case on hand. It is also relevant to note that the validity of an identical clause under a contract of hire that the Corporation shall be absolved from liability to pay compensation in respect of any accident, was also considered by this Court in ANDHRA PRADESH STATE ROAD TRANS. CORPN. v. BODAPATI KANAKA RATNABAI[3] and such clause was held to be against public policy.

In the circumstances, the Corporation cannot fasten the liability on the petitioner on the ground that she is the owner of the vehicle. If the Corporation is aggrieved by the award, it is always open to it to challenge the award in O.P.No.112 of 2003 by working out the appropriate remedy as available under law and to seek a declaration that the Insurance Company, being the insurer has to indemnify the Corporation. Consequently insistence to furnish Bank Guarantee by the petitioner for Rs.40,000/- as a condition precedent to issue clearance certificate is unwarranted. Accordingly, Writ Petition is allowed and the impugned memo of the 2nd respondent dated 28-7-2006 is set aside with a direction to the 2nd respondent to reconsider the request of the petitioner for release of clearance certificate in accordance with law. No costs.

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G. ROHINI, J.

Dt. 4-9-2006
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[1] 1997 ACJ 1148 (SC)
[2] 2006 ACJ 1341
[3] 2001 ACJ 401